

# COUNTY OF YORK

## MEMORANDUM

**DATE:** December 17, 2002 (BOS Mtg. 1/21/03)

**TO:** York County Board of Supervisors

**FROM:** James E. Barnett, County Attorney

**SUBJECT:** Ordinance vacating the unopened portion of Martiau Street in Yorktown and declaring title thereto vested in the County of York

As you have been made aware, Martiau Street in Yorktown, Virginia, as it has been platted since at least 1889, extends in a northeasterly direction beyond the point where it is currently maintained by the Virginia Department of Transportation (VDOT) near the edge of the Yorktown bluff, then down the hill and through the parking lot of Nick's Seafood Pavilion, to where it intersects with Water Street. The right-of-way is 33' wide, and lies immediately adjacent to the north side of the restaurant building. To the best of my knowledge, apart from the portion that is maintained by VDOT, Martiau Street extended has not been utilized as a public road in recent decades, although prior to the establishment of Nick's Seafood Pavilion, it may have provided access along a portion of its length to some homes and businesses located on Water Street. It was never made part of the State's system of roads. Recently, the VDOT Residency Office in Williamsburg has advised me both orally and in writing (copy of letter attached) that the Commonwealth of Virginia claims no interest in Martiau Street extended. Therefore, it exists as a platted, but unused street, which could be utilized as a public roadway only (I suspect) at significant expense given the amount of excavation which would be required to allow the road to travel up the steep hillside behind the restaurant. Importantly, however, Martiau Street extended lies between two of the parcels recently purchased by the County from the Jamestown-Yorktown Educational Trust, and runs right through the location of the proposed parking facility which the County and the IDA propose to build on the southern side of Water Street where the restaurant now stands.

Before any construction can take place on Martiau Street extended, it must be vacated as a public right-of-way and the County must acquire insurable title to the land within the vacated road. Attached is a copy of a plat showing that portion of Martiau Street which is sought to be vacated. Also attached is an ordinance, which, if adopted, would vacate Martiau Street extended pursuant to Code of Virginia § 15.2-2006. That statute generally authorizes a locality to vacate any public rights-of-way located in the locality and not maintained by the State provided that the local government adopts such a resolution following a public hearing which has been advertised at least twice. That statute, for your information, authorizes, but does not require, the local government to appoint three to five people to view the public right-of-way and report in writing any inconvenience that would result from discontinuing the right-of-way prior to the adoption of the resolution. However, given that Martiau Street extended appears not to have been utilized as a public thoroughfare for many years, and its existence is inconsistent with the proposal to build a public parking facility on Water Street, I have assumed that the Board will wish to bypass the mechanism of appointing a committee to view the roadway and report to the Board prior to the Board's action. The adoption of attached ordinance 03-04, which has been duly advertised as required by the statute, would accomplish that purpose.

For your information, the Yorktown Trustees will also be considering their own resolution to abandon Martiau Street extended. It is my assumption that the Code of Virginia grants to locally elected governing bodies the sole authority to abandon rights-of-way (at least, those rights-of-way in which the state claims no interest) and the Yorktown Trustees, as an appointed body, exercise no such legislative authority. However, because there has never been a judicial declaration of the extent of municipal authority within the historic village which may be retained by the Trustees, out of caution I asked them to adopt a parallel resolution, and they currently have the matter scheduled for consideration at their meeting of January 6. A search of the title to the roadway suggests, however, that the Trustees never actually owned the land included within Martiau Street.

Given that the owners of property abutting Martiau Street used it for years either as public access, or for private purposes, it is my conclusion that, upon vacation of the road, the County (as the owner of all abutting property) will acquire title to the vacated road by operation of law. However, in the event that my conclusions are ever challenged, I have also provided you by a separate memorandum a resolution authorizing the initiation of condemnation proceedings, utilizing the "quick take" procedure, for the County to attain title to the vacated roadway. The quick take condemnation procedure, with which you are familiar because of its frequent use in obtaining easements for water and sewer line extensions, allows the County, after the adoption of appropriate resolutions, to file a certificate of take among the land records pledging to pay the estimated value of the property to be acquired into the Court should anyone step forward with proof of ownership requesting distribution of the estimated value. The County could then wait until after completion of the parking facility to actually initiate a condemnation proceeding in circuit court to have the court determine the actual value of the acquisition. For your information, the County recently had Martiau Street extended appraised at a value of \$9,900.00, and the Yorktown Trustees have agreed to accept that price in payment for the vacated roadway should they be able to prove to the circuit court that it is they, after all, who own the roadway. Payment in such event would be made into the Yorktown Fund, which is to be utilized only for the maintenance of improvements to the Yorktown waterfront, meaning that the Trustees have in effect, volunteered to donate the right-of-way to the County.

There is, by the way, an old sewer line easement in Martiau Street owned by the Park Service. The easement is one of several for which the Park Service has already obtained Congressional approval to turn over to the County by virtue of a 1997 agreement between the County and the Park Service. The Park Service has pledged to accelerate the process of turning the easement over to the County so that construction of the proposed parking facility will not be delayed.

Barnett/3340:swb

Attachments

- ? Plat showing portion of Martiau Street to be vacated
- ? Letter dated December 19, 2002, from James Webb Jones, Asst. Attorney General, Commonwealth of Virginia
- ? Ord No. 03-04